

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-16848

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT DEC 7, 2006 THOMAS K. KAHN CLERK
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D. C. Docket No. 03-02733 CV-B-S,

LAURA CAIN,

Plaintiff-Appellant,

versus

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA, VAXIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(December 7, 2006)

Before ANDERSON and BARKETT, Circuit Judges, and GOLDBERG,* Judge.

*Honorable Richard W. Goldberg, Judge, United States Court of International Trade, sitting by designation.

PER CURIAM:

After oral argument and careful consideration, we conclude that the district court is due to be affirmed. For the reasons discussed at oral argument, the alleged hostile environment did not rise to the necessary level of severity or pervasiveness,¹ and even if it did, plaintiff cannot surmount the Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998), defense. With respect to the promotion of Dr. Siegel, plaintiff was not qualified. Moreover, no reasonable jury could find pretext in light of the legitimate business reason. With respect to plaintiff's retaliation claim, no reasonable jury could find retaliation in light of the fact that plaintiff was not qualified for the position to which Dr. Siegel was promoted. We note that appellant's initial brief fails to preserve any challenge to any later denial of a promotion, either as a substantive challenge or as an alleged action taken in retaliation for protected conduct.

Accordingly, the judgment of the district court is

AFFIRMED.²

¹ Any claim with respect to Dr. Reddy is time-barred.

² In light of our disposition, we need not address plaintiff's argument about the joint employer theory. Appellee Vaxin's motion for double costs and attorney fees on appeal is Denied.